



ISSUE BRIEF

Concerns from 2021 Police Reform Legislation

Background

After months of protests across the country calling for racial justice, during the 2020 interim, Democrat majorities in the state Legislature made it clear that their prioritization of equity for the 2021 legislative session would be heavily focused on police reform. The Legislature passed a suite of bills related to police reform including several that the law enforcement community had voiced serious concerns about. These bills went into effect on July 25, 2021. The implementation of these bills have caused a flurry of discussion and concern over how law enforcement is meant to adhere to and interpret the new laws while still faithfully executing their duties and protecting their communities.

The majority of issues being raised by law enforcement revolve around the changes on initiating use of force, vehicular pursuits, as well as ambiguity in the use of less lethal tactics and equipment. The sponsor of the legislation has admitted that there is some need for clarification related to certain issues that have been raised by the law enforcement community, while downplaying the need to offer clarification on others.

While a number of bills passed during the legislative session, the concerns being raised by law enforcement come almost entirely from [HB 1310 \(Use of Force\)](#) and [HB 1054 \(Police Tactics and Equipment\)](#), both sponsored by Rep. Jesse Johnson. It had been reported that Rep. Johnson had requested legal opinions from the Attorney General's Office (AG) which would provide an official interpretation of the bills and highlight any gray areas which may need clarifying legislation next session. However, through talks with the AG, legislators have learned that, currently, no official AG opinion has been requested. HRC members are currently working to ensure the request is made, and proper clarification can be provided.

Key concerns from law enforcement related to HB 1054 and HB 1310

Chokeholds & Neck Restraints (HB 1054): The bill bans the use of chokeholds and vascular neck restraint (VNR) along with a list of other weapons and tactics.

Problem: When properly applied, the use of VNR during a physical confrontation with a subject reduces the risk of injury to both the subject and the officer. The elimination of VNR as a de-escalation tool now places the officer into a situation where he or she may need to use **greater** force to gain control, effect an arrest, or in the worst-case scenario, defend against death.

Potential Solution: Allow VNR but mandate additional training for its use.

Less Lethal Ammunition (HB 1054): The bill states that less lethal ammunition should be used as an alternative to lethal ammunition and weaponry banned under the bill. However, the bill bans all weapons systems of .50 caliber and larger, and many other types of military equipment.

Problem: Twelve-gauge shotguns and 37/40 millimeter grenade launchers used to deliver non-lethal rounds such as beanbags are larger than .50 caliber in diameter, and so it can currently be interpreted that it is not legal for law enforcement to use any form of non-lethal round discharged from these weapons. By some interpretations, the bill could also ban police from using shotguns, because shotguns are larger than .50 caliber, although they do not use the same system of measurement.

Potential Solution: Remove references to firearms from the bill to clarify the .50-caliber ammunition and larger being banned under the law is limited to lethal projectiles, and that larger non-lethal rounds are exempt from the ban. It could also be clarified that 12-gauge shotguns do not constitute military equipment and can still be used by law enforcement.

Less Lethal Ammunition (HB 1054): The bill requires officers to have "probable cause" to believe the suspect has committed or is committing a violent offense, sex offense or an escape offense, or there is "reasonable suspicion" that a person in the vehicle has committed or is committing a driving-under-the-influence (DUI) offense.

Problem: The previous standard of "reasonable suspicion" for conducting a pursuit was easier to meet, and law enforcement will not be able to pursue a suspect on a potential of serious crimes without "probable cause." This includes crimes such as Manslaughter I & II, Kidnapping II, Assault I & II, and Vehicular Homicide.

Potential Solutions: **A.** Restore the authority of a peace officer to engage in a vehicular pursuit when there is "reasonable suspicion" a person has violated the law and the officer follows appropriate safety standards. **B.** Lower the burden of proof from "probable cause" to "reasonable suspicion" only for individuals suspected of having committed a sexual or felonious violent offense.

Use of Force (HB 1310): The bill bans a number of tactics and makes it unlawful to use force against a person if probable cause for the arrest does not exist.

Problem: The restrictions could make it harder for police to de-escalate situations, including domestic violence disputes and situations involving someone suffering from mental illness. There may also be cases, where an officer needs to use force (e.g., [temporary detention of a suspect](#)) to get a situation under control so they can conduct the brief investigation needed to determine probable cause, which may now be prohibited due to passage of HB 1310.

Potential Solution: Restore the authority of peace officers to use physical force when necessary to prevent and protect against suspected criminal conduct and when necessary to effect a lawful detention.

Involuntary Treatment (HB 1310): One part of the law uses the term "imminent threat" as the threshold for an officer to take someone to get mental or behavioral health treatment. An imminent threat is defined as the intent and ability to cause serious injury to themselves or others, while the Involuntary Treatment Act specifies a "likelihood of serious harm" as reason to institutionalize someone against their will.

Problem: These standards conflict.

Potential Solution: Remove imminent threat language and use the Involuntary Treatment Act definition, which is the lower threshold of the two standards.

Stakeholders

Washington Association of Sheriffs and Police Chiefs, Washington Fraternal Order of Police, Washington Council of Police and Sheriffs, Teamsters 117 (Corrections Officers), Washington State Patrol Troopers Association, Washington Black Lives Matter Alliance, Washington Coalition for Police Accountability, Equal Rights Washington, Office of Police Accountability, Disability Rights Washington, American Civil Liberties Unions of Washington, Association of Washington Cities.

Additional information/Resources

Why Democrats' police reform bill have made communities less safe: <https://houserepublicans.wa.gov/2021/07/09/democrats-police-reform-bills-make-communities-less-safe/>